

# MAINE STATE LEGISLATURE

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# 130th MAINE LEGISLATURE

## FIRST SPECIAL SESSION-2021

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Legislative Document

No. 1373

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H.P. 1007

House of Representatives, April 7, 2021

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**An Act To Keep All Maine Students Safe by Restricting the Use of  
Seclusion and Restraint in Schools**

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Received by the Clerk of the House on April 5, 2021. Referred to the Committee on Education and Cultural Affairs pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT  
Clerk

Presented by Representative MILLETT of Cape Elizabeth.  
Cosponsored by Representatives: CRAVEN of Lewiston, MADIGAN of Waterville,  
McCREIGHT of Harpswell, Senator: RAFFERTY of York.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 20-A MRSA §7008** is enacted to read:

3 **§7008. Use of seclusion and physical restraint**

4 **1. Definitions.** As used in this section, unless the context otherwise indicates, the  
5 following terms have the following meanings.

6 A. "Chemical restraint" means a drug or medication that is not prescribed as the  
7 standard treatment of a student's medical or psychiatric condition by a licensed  
8 physician or other qualified health professional acting under the scope of the  
9 professional's authority under state law that is used on a student to control behavior or  
10 restrict freedom of movement.

11 B. "Covered entity" means an entity that owns, operates or controls a school or  
12 educational program that receives public funds from the department, including, but not  
13 limited to, public schools, public regional programs, public charter schools, private  
14 schools, private schools approved for tuition purposes, special purpose private schools,  
15 career and technical education programs, public prekindergarten programs and  
16 providers of services pursuant to the provisions of the federal Individuals with  
17 Disabilities Education Act, Parts B and C, 20 United States Code, Section 1401 et seq.  
18 (2015).

19 C. "Mechanical restraint" means the use of a device to restrict a student's freedom of  
20 movement.

21 D. "Physical escort" means the temporary, voluntary, touching or holding of the hand,  
22 wrist, arm, shoulder or back to induce a student to walk to a safe location.

23 E. "Physical prompt" means a teaching technique that involves voluntary physical  
24 contact with the student that enables the student to learn or model the physical  
25 movement necessary for the development of a desired competency.

26 F. "Physical restraint" means a personal restriction that immobilizes or reduces the  
27 ability of a student to move the arms, legs or head freely. "Physical restraint" does not  
28 include a physical escort, mechanical restraint, physical prompt or chemical restraint.

29 G. "Seclusion" means the involuntary isolation or confinement of a student alone in a  
30 room or clearly defined area from which the student does not feel free to go or is  
31 physically denied exit.

32 H. "Unlawful seclusion or restraint" means:

33 (1) Seclusion;

34 (2) Mechanical restraint;

35 (3) Chemical restraint;

36 (4) Physical restraint or physical escort that is life-threatening, restricts breathing  
37 or restricts blood flow to the brain, including prone and supine restraint; or

38 (5) Physical restraint that is contraindicated based on Title 34-B, section 3003 or  
39 section 15002 or the student's disability or health care needs or medical or  
40 psychiatric condition as documented in:

- 1                   (a) A health care directive or medical management plan;
- 2                   (b) A behavior intervention plan;
- 3                   (c) An individual education plan or an individual family service plan as  
4                   defined in the federal Individuals with Disabilities Education Act, 20 United  
5                   States Code, Section 1401 et seq. (2015); or
- 6                   (d) A plan developed pursuant to the federal Rehabilitation Act of 1973, 29  
7                   United States Code, Section 794 (2015) or the federal Americans with  
8                   Disabilities Act of 1990, Title II, 42 United States Code, Section 12131 et seq.  
9                   (2009).

10                   **2. Prohibitions on restraint and seclusion.** A covered entity that receives state or  
11                   federal assistance may not subject a student to unlawful seclusion or restraint.

12                   **3. Report on data regarding the use of physical restraint.** The commissioner shall  
13                   submit a report on data regarding the use of physical restraint collected pursuant to the  
14                   department's rules governing physical restraint and special education. Each covered entity  
15                   shall submit to the department an annual report on incidents of physical restraint of students  
16                   of that covered entity that includes:

- 17                   A. The aggregate number of uses of physical restraint;
- 18                   B. The aggregate number of students placed in physical restraint;
- 19                   C. The aggregate number of students who have disabilities and an individualized  
20                   education program under the federal Individuals with Disabilities Education Act, 20  
21                   United States Code, Section 1401 et seq. (2015) or a plan pursuant to the federal  
22                   Rehabilitation Act of 1973, 29 United States Code, Section 701 et seq. placed in  
23                   physical restraint;
- 24                   D. The aggregate number of serious bodily injuries to students related to physical  
25                   restraint; and
- 26                   E. The aggregate number of serious bodily injuries to staff related to physical restraint.

27                   The commissioner's report must also include aggregate data gathered through a  
28                   performance review system and subsequent compliance plans under subsection 4 and any  
29                   use of unlawful seclusion or restraint. The report must be submitted to the Governor and  
30                   the joint standing committee of the Legislature having jurisdiction over education and  
31                   cultural affairs no later than January 15th of every odd-numbered year.

32                   **4. Performance review system.** The department shall develop and implement a  
33                   performance review system to define and monitor the use of physical restraint by school  
34                   administrative units and special purpose programs. The performance review system must  
35                   monitor compliance with this section and relevant department rules, including the  
36                   requirement of submitting data to the department. The performance review system must  
37                   identify accountability standards and identify when a school administrative unit's or special  
38                   purpose program's level of incidents of physical restraint exceeds average levels. The  
39                   performance review system must include a compliance plan to require the school  
40                   administrative unit or special purpose program to reduce use of physical restraint with  
41                   specific targets and time frames. Rules adopted pursuant to this subsection are major  
42                   substantive rules as defined by Title 5, chapter 375, subchapter 2-A and must be submitted  
43                   for legislative review no later than December 5, 2022.

1 **5. Guide for information regarding rule.** The commissioner shall develop and  
2 provide information about rules adopted under subsection 4, including a guide that includes  
3 a template for a school administrative unit or special purpose program to use to explain any  
4 additional local policies or local complaint processes.

5 **6. Technical assistance.** The department shall provide technical assistance to covered  
6 entities by developing, implementing and providing technical assistance to support  
7 evidence-based programs that reduce the likelihood of physical restraint, and support  
8 students in reducing behavior that can result in physical restraint, such as developmentally  
9 appropriate, positive behavior interventions, functional behavioral interventions, mental  
10 health supports, restorative justice programs, trauma-informed care and crisis and de-  
11 escalation interventions.

12 **7. Rules.** The department shall adopt rules to carry out the purposes of this chapter.  
13 Except for rules adopted under subsection 4, rules adopted pursuant to this section are  
14 routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

15 **SUMMARY**

16 This bill, in the special education provisions of the Maine Revised Statutes, prohibits  
17 the use of seclusion, chemical restraints, mechanical restraints and certain physical  
18 restraints of students by schools and other entities. The bill directs schools to make annual  
19 reports to the Department of Education regarding incidents of physical restraint and directs  
20 the Commissioner of Education to report biennially to the Governor and the Legislature on  
21 data regarding the use of physical restraint and seclusion. The bill also directs the  
22 Department of Education to develop and implement a performance review system to define  
23 and monitor the use of physical restraint by school administrative units and special purpose  
24 programs.